

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
First Regular Session  
2003

CHAPTER 167

# HOUSE BILL 2264

AN ACT

AMENDING SECTIONS 49-282, 49-287.01, 49-287.03, 49-289.04 AND 49-292, ARIZONA  
REVISED STATUTES; RELATING TO ENVIRONMENTAL REMEDIAL ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-282, Arizona Revised Statutes, is amended to read:

49-282. Water quality assurance revolving fund

A. A water quality assurance revolving fund is established to be administered by the director. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature.
2. Fertilizer license fees allocated under section 3-272, subsection B, paragraph 2.
3. Pesticide registration fees allocated under section 3-351, subsection D, paragraph 2.
4. The tax on water use pursuant to section 42-5302.
5. Water quality assurance fees collected under section 45-616.
6. Industrial discharge registration fees collected under section 49-209.
7. Manifest resubmittal fees collected under section 49-922.01.
8. Hazardous waste facility registration fees collected under section 49-929.
9. Hazardous waste resource recovery facility registration fees collected under section 49-930.
10. Monies recovered from responsible parties as remedial action costs.
11. Monies received as costs for a review of remedial actions at the request of a person other than the state.
12. Monies received from the collection of corporate income taxes under title 43, chapter 11, article 2 as prescribed by subsection B of this section.
13. Prospective purchaser agreement fees collected under section 49-285.01.

B. The water quality assurance revolving fund shall be assured of an annual funding amount of eighteen million dollars. Beginning July 1, 1999, as soon as practicable at the beginning of each fiscal year, the state treasurer shall transfer the sum of fifteen million dollars to the water quality assurance revolving fund from the corporate income tax as collected pursuant to title 43, chapter 11, article 2. As custodian of the fund, the director shall certify to the governor, the state treasurer, the president of the senate and the speaker of the house of representatives at the end of that fiscal year the amount of monies deposited in the water quality assurance revolving fund pursuant to subsection A, paragraphs 1 through 9 OF THIS SECTION. At the end of the fiscal year the state treasurer shall adjust the fifteen million dollar transfer of corporate income tax so that, when combined with monies deposited in the fund during that fiscal year pursuant to subsection A, paragraphs 1 through 9 OF THIS SECTION, the fund receives eighteen million dollars each fiscal year. This adjustment shall occur as part of the year-end book closing process for that fiscal year. If

1 sufficient monies from the corporate income tax are not available to make any  
2 necessary upward adjustments as part of the year-end book closing, the state  
3 treasurer shall transfer the monies necessary to achieve the eighteen million  
4 dollar funding level from the transaction privilege and severance tax  
5 clearing account pursuant to section 42-5029, subsection D, paragraph 4, to  
6 the water quality assurance revolving fund. Any transfers prescribed by this  
7 subsection shall not be deducted from the net proceeds distributed pursuant  
8 to section 43-206.

9 C. At the beginning of each fiscal year the director shall transfer  
10 the sum of ENVIRONMENTAL QUALITY SHALL CONTRACT WITH THE DEPARTMENT OF WATER  
11 RESOURCES FOR THE TRANSFER OF UP TO eight hundred thousand dollars from the  
12 water quality assurance revolving fund to the Arizona water quality fund  
13 established by section 45-618 FOR SUPPORT SERVICES FOR THE WATER QUALITY  
14 ASSURANCE REVOLVING FUND PROGRAM. THE SUPPORT SERVICES PROVIDED FOR THE  
15 WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM SHALL BE DETERMINED BY THE  
16 DIRECTOR OF WATER RESOURCES IN CONSULTATION WITH THE DIRECTOR OF  
17 ENVIRONMENTAL QUALITY.

18 D. Monies in the fund are exempt from lapsing under section 35-190.  
19 Interest earned on monies in the fund shall be credited to the fund.

20 E. Monies from the water quality assurance revolving fund shall be  
21 used for the following purposes:

22 1. To provide state matching monies or to meet such other obligations  
23 as are prescribed by section 104 of CERCLA.

24 2. For all reasonable and necessary costs to implement this article,  
25 including:

26 (a) Taking remedial actions.

27 (b) Conducting investigations of an area to determine if a release or  
28 a threatened release of a hazardous substance exists.

29 (c) Conducting remedial investigations, feasibility studies, health  
30 effect studies and risk assessments.

31 (d) Identifying and investigating potentially responsible parties and  
32 allocating liability among the responsible parties.

33 (e) Funding orphan shares.

34 (f) Participating in the allocation process, administrative appeals  
35 and court actions.

36 (g) Funding the community advisory boards and other community  
37 involvement activities and the water quality assurance revolving fund  
38 advisory board.

39 (h) Remediating pollutants if necessary to remediate a hazardous  
40 substance.

41 3. For the reasonable and necessary costs of monitoring, assessing,  
42 identifying, locating and evaluating the degradation, destruction, loss of  
43 or threat to the waters of the state resulting from a release of a hazardous  
44 substance to the environment.

45 4. For the reasonable and necessary costs of administering the fund.

1           5. For the reasonable and necessary costs of administering the  
2 industrial discharge registration program under section 49-209.

3           6. For the costs of the water quality monitoring program described in  
4 section 49-225.

5           7. For compliance monitoring, investigation and enforcement activities  
6 pertaining to generating, transporting, treating, storing and disposing of  
7 hazardous waste. The amount to be used pursuant to chapter 5 of this title  
8 is limited to the amount received in the prior fiscal year from the hazardous  
9 waste facility registration fee.

10          8. For emergency response use as prescribed in section 49-282.02.

11          9. For all reasonable and necessary costs of the preparation and  
12 execution of prospective purchaser agreements.

13          10. For all reasonable and necessary costs of the voluntary remediation  
14 program.

15          11. To reimburse a political subdivision of this state for its  
16 reasonable, necessary and cost-effective remedial action costs incurred in  
17 response to a release or threat of a release of a hazardous substance or  
18 pollutants that presents an immediate and substantial endangerment to the  
19 public health or the environment. The political subdivision is not eligible  
20 for reimbursement until it has taken all reasonable efforts to obtain  
21 reimbursement from the responsible party and the federal government. No more  
22 than two hundred fifty thousand dollars may be spent from the fund for this  
23 purpose in any fiscal year.

24          12. For all reasonable and necessary costs incurred by the department  
25 pursuant to section 49-282.04 and the department of water resources pursuant  
26 to section 45-605 for well inspections, remedial actions and review and  
27 approval of well construction necessary to prevent vertical  
28 cross-contamination. The director of environmental quality and the director  
29 of water resources shall enter into an agreement for the transfer of these  
30 costs.

31          13. For actions that are taken pursuant to section 49-282.03 before the  
32 selection of a remedy.

33          14. For the reasonable and necessary costs of the conveyance, use or  
34 discharge of water remediated as part of a remedy under this article.

35          15. For the reasonable and necessary costs incurred by the department  
36 of health services at the request of the director of environmental quality  
37 to assess and evaluate the effect of a release or threatened release of  
38 hazardous substances to the public health or welfare and the  
39 environment. The director of environmental quality and the director of the  
40 department of health services shall enter into an agreement for the transfer  
41 of these costs. The assessment and evaluation by the department of health  
42 services may include:

43           (a) Performing health effect studies and risk assessments.

44           (b) Evaluating and calculating cleanup standards.

45           (c) Assisting in communicating health and risk issues to the public.

1       16. For the reasonable and necessary costs incurred by the department  
2 of law to provide legal services at the request of the director of  
3 environmental quality.

4       17. For the reasonable and necessary costs of contracting for the goods  
5 and services to enable the director to implement this article.

6       18. For remediation demonstration projects that use bioremediation or  
7 other alternative technologies. The department may not use more than five  
8 hundred thousand dollars in a fiscal year pursuant to this paragraph.

9       F. Any political subdivision of this state which uses, used or may use  
10 waters of the state for drinking water purposes or any state agency,  
11 regardless of whether the political subdivision or state agency is a  
12 responsible party, may apply to the director for monies from the fund to be  
13 used for remedial action. An application to the fund for remedial action  
14 costs shall not be treated as an admission that a political subdivision or  
15 an agency of the state is a responsible party, but a political subdivision  
16 or a state agency that is a responsible party is liable for remedial action  
17 costs in the same manner, including reimbursement of the fund, as any other  
18 responsible party. The political subdivision shall commit a local matching  
19 amount at least equal to the amount sought from the fund.

20       G. IN CONSULTATION WITH THE WATER QUALITY ASSURANCE REVOLVING FUND  
21 ADVISORY BOARD ESTABLISHED BY SECTION 49-289.04, the director shall prepare  
22 and submit a written report to the speaker of the house of representatives,  
23 and the president of the senate, ~~in~~ THE MINORITY PARTY LEADER IN THE HOUSE  
24 OF REPRESENTATIVES AND THE MINORITY PARTY LEADER IN THE SENATE, THE GOVERNOR,  
25 THE MEMBERS OF THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE DIRECTOR OF THE  
26 JOINT LEGISLATIVE BUDGET COMMITTEE BY December 1 of each year. The report  
27 shall describe INCLUDE INFORMATION CONCERNING AT LEAST THE FOLLOWING:

28       1. EMERGENCY RESPONSE ACTIONS, PRIORITY SITE REMEDIATION, COST  
29 RECOVERY ACTIVITY REVENUE AND EXPENDITURES AND OTHER WATER QUALITY ASSURANCE  
30 REVOLVING FUND PROGRAMS.

31       ~~1.~~ 2. The accomplishments from expenditures from the fund during the  
32 preceding fiscal year in terms of the reduction of contamination in the  
33 environment and actions taken to determine the nature and extent of  
34 contamination.

35       ~~2.~~ 3. The status of all sites on the registry, including the site  
36 locations, the basis for establishing site boundaries and whether remedial  
37 actions taken to date would support a modification of the boundaries of the  
38 site.

39       ~~3.~~ 4. The number of settlements made with responsible parties and the  
40 terms of each settlement.

41       ~~4.~~ 5. The number and types of settlements applied for and made  
42 pursuant to sections 49-292.01 and 49-292.02, including:

43       (a) The number of applications submitted under each section.

44       (b) The number of applications denied under each section.

1 (c) The number of applicants who settled based on the formula in  
2 section 49-292.01, subsection C, paragraph 1 and the total amount of the  
3 settlements.

4 (d) The number of settlements pursuant to section 49-292.02 and the  
5 total amount of the settlements.

6 (e) The number of persons who met the definition of qualified business  
7 under section 49-292.01, subsection J but who settled pursuant to section  
8 49-292.02, for each such person, the amount of the settlement as a percentage  
9 of the person's average annual gross income for the two years preceding the  
10 request for settlement, and for all such persons, the total of the difference  
11 between the settlement amounts and the amounts that would have been paid  
12 based on the formula in section 49-292.01, subsection C, paragraph 1.

13 H. The director of environmental quality shall prepare and submit a  
14 budget for the water quality assurance revolving fund program and the  
15 director of water resources shall prepare and submit a budget for the Arizona  
16 water quality fund with the departments' budgets that are required pursuant  
17 to section 35-111. The committees on appropriations of the house of  
18 representatives and the senate shall review the water quality assurance  
19 revolving fund budget and the Arizona water quality fund budget and the  
20 reports made pursuant to subsection G of this section to ensure that the  
21 departments' expenditures are made in accordance with the legislature's  
22 intent and that the departments are making adequate progress toward  
23 accomplishing that intent.

24 Sec. 2. Section 49-287.01, Arizona Revised Statutes, is amended to  
25 read:

26 49-287.01. Investigation scoring and site registry; no further  
27 action

28 A. Based on information of a possible release or threatened release  
29 of a hazardous substance, the director may conduct a preliminary  
30 investigation to obtain additional information necessary to determine the  
31 potential risk to the public health or welfare or the environment in order  
32 to score the site or portion of the site and include it on the site registry.  
33 By written agreement, the director may allow any person to conduct any  
34 portion of the preliminary investigation.

35 B. After completing the preliminary investigation, the director shall  
36 either determine that no further investigation or action is necessary or  
37 shall prepare a draft of the site registry report required under subsection  
38 D of this section. The report shall contain a description of the site or  
39 portion of the site, including its geographical boundaries, and a score in  
40 accordance with the site scoring method established in rules adopted by the  
41 director.

42 C. Before finalizing the report and the score, the director shall  
43 furnish a copy to the current owners and operators of the site or portion of  
44 the site, if known, and shall provide fifteen days for review and comment.  
45 The director shall then place a copy in the public file and shall publish the

1 score in a newspaper of general circulation within the county in which the  
2 site is located. The director shall provide thirty days for comment and  
3 shall consider any comments before issuing the final report and score.

4 D. The director shall maintain a registry of scored sites or portions  
5 of sites that includes a brief description of the site or portion of the  
6 site, its score and a brief description of the status of investigative and  
7 remedial actions. The scoring of a site or portion of the site, its relative  
8 score or its placement on the registry does not necessarily represent a  
9 determination that the release of a hazardous substance from the site poses  
10 a threat to human health or welfare or the environment. Prior to approving  
11 any remedy that may result in water quality exceeding water quality standards  
12 after completion of the remedy, the director shall place a notice in the  
13 registry established pursuant to this subsection that the remedy may result  
14 in water quality exceeding water quality standards.

15 E. New scores shall be added to the registry as soon as practicable.  
16 The registry shall be published annually by the secretary of state in the  
17 Arizona administrative register. and THE DEPARTMENT SHALL ALSO PUBLISH  
18 NOTICE OF THE AVAILABILITY OF THE REGISTRY in a newspaper of general  
19 statewide circulation. ~~The director shall conduct annual statewide public~~  
20 ~~meetings to provide and discuss information regarding sites on the registry.~~

21 F. Any person may request that the director make a determination that  
22 a site or portion of a site requires no further action or should be rescored.  
23 The request shall include information, including the specific hazardous  
24 substances released at or from the site or portion of the site, and a  
25 geographical description of the site or portion of the site sufficient for  
26 a determination by the director regarding the requested action. The director  
27 may request additional information from the requesting party within ninety  
28 days after receiving the party's request, and the director shall provide the  
29 reasons for requesting the additional information. The person making the  
30 request shall submit the additional information within sixty days after  
31 receiving the director's request for additional information. Within thirty  
32 days of receipt of the additional information, the director shall notify the  
33 requesting party if the additional information is complete. The submission  
34 of incomplete information may result in a denial of the no further action  
35 request. The parties may agree in writing to additional time for  
36 responses. In addition to requesting information, the director or the  
37 director's authorized representative may conduct an investigation of the site  
38 or portion of the site and shall be given access to the portion of the site  
39 under the control of the requestor. The director or the director's  
40 authorized representative shall be allowed access to the site as a  
41 requirement for making a no further action request. The director shall deny  
42 a request for a no further action determination if access to the site is not  
43 provided. A request pursuant to this subsection may only be made once per  
44 calendar year. After determining that the information submitted is  
45 sufficient for action on the request, the director shall publish notice of

1 the request for rescoring or determination of no further action on a site or  
2 portion of the site and shall provide thirty days for public comment. Based  
3 on the information and comments received, and within sixty days after the  
4 close of the public comment period, unless extended by the director for good  
5 cause, the director shall determine whether the score should be changed or  
6 a determination of no further action should be made and shall give notice of  
7 that decision to the person who made the request and any persons who provided  
8 comment. The director shall make a final decision on a no further action or  
9 rescoring request within three hundred days after receiving the request  
10 unless the time is extended in writing by the parties. The director's  
11 decision shall contain the factual, technical and legal grounds for the  
12 decision. Any changes to a score or determinations of no further action  
13 shall be published in the registry.

14 G. A determination of no further action shall be made if the director  
15 finds that the site or portion of the site does not present a significant  
16 risk to the public health or welfare or the environment. The director's  
17 determination on a no further action request shall be based on the rules  
18 adopted by the department pursuant to section 49-282.06. A determination of  
19 no further action shall state whether it is for soils or the groundwater, or  
20 both. A determination of no further action regarding a site or a portion of  
21 the site means that the department shall not proceed with or require further  
22 remedial action under this article for the specific hazardous substances  
23 within the geographical area covered by the determination, provided that the  
24 determination of no further action does not preclude the director from  
25 obtaining access to the area covered by the determination under this article  
26 or any other law. The department may reopen an investigation and take or  
27 require remedial action for any of the following reasons:

28 1. On discovery of new information that, based on the rules adopted  
29 by the department pursuant to section 49-282.06, would result in the  
30 potential denial of a no further action request.

31 2. That information submitted to the director pursuant to subsection  
32 F of this section was inaccurate, misleading or incomplete.

33 3. The reopening of an investigation or the taking of a remedial  
34 action is necessary to respond to a release or the threat of a release of a  
35 hazardous substance that may present an imminent and substantial danger to  
36 the public health or welfare or the environment.

37 H. The director's decision under subsection F of this section may be  
38 appealed pursuant to section 49-298, subsection B by the person who made the  
39 request or any party who will be adversely affected by the action and who  
40 submitted comments. A person who has previously filed an administrative  
41 appeal under this subsection or any provision of law in effect on or after  
42 April 29, 1997 concerning previous investigations by the director that  
43 resulted in the director's decision being upheld bears the burden of proving  
44 by clear and convincing evidence that the director's action that is being  
45 appealed was unsupported by the evidence in any further administrative

1 appeals involving the same site or portion of the site and shall pay the  
2 director's cost of reviewing the request and the director's attorney fees and  
3 costs incurred in the appeal if the director's decision is upheld.

4 I. If the director determines that remediation of a site or a portion  
5 of a site will be addressed pursuant to a provision of this title other than  
6 this article, the director may suspend any further investigation or action  
7 under this article. If the site or portion of a site is listed on the  
8 registry, the suspension shall be reflected on the registry.

9 Sec. 3. Section 49-287.03, Arizona Revised Statutes, is amended to  
10 read:

11 49-287.03. Remedial investigation and feasibility study

12 A. The department may conduct a remedial investigation and feasibility  
13 study of a scored site or portion of the site to assess conditions on the  
14 site or portion of the site and to evaluate alternative potential remedies  
15 to the extent necessary to select a final remedy in a manner consistent with  
16 the rules and procedures adopted pursuant to section 49-282.06.

17 B. Unless the director determines that the necessary remedial action  
18 can be completed within one hundred eighty days, before the department begins  
19 a remedial investigation and feasibility study for a site or a portion of a  
20 site, the department shall prepare a scope of work, a fact sheet and an  
21 outline of a community involvement plan. The scope of work shall generally  
22 describe the proposed scope of the remedial investigation and feasibility  
23 study. The outline of the community involvement plan shall address all of  
24 the elements of the community involvement plan requirements of section  
25 49-289.03.

26 C. The department shall provide written notice to each person who,  
27 according to information available to the department, may be liable under  
28 this article that the scope of work is available for inspection and that any  
29 person by agreement with the department may develop and implement a work plan  
30 for the remedial investigation and the feasibility study. The department  
31 shall publish in a newspaper of general circulation in the county where the  
32 site is located a notice of the availability of the scope of work, fact sheet  
33 and outline of a community involvement plan for public comment. The notice  
34 shall provide an opportunity for a public meeting.

35 D. The department shall prepare a responsiveness summary before  
36 implementing the scope of work. Before the director implements a remedial  
37 investigation, unless the director determines that the necessary remedial  
38 action can be completed within one hundred eighty days, the department shall  
39 prepare and implement the community involvement plan based upon the outline  
40 and after considering the public comments, consistent with the requirements  
41 of section 49-289.03. The department shall annually update the community  
42 involvement plan AT LEAST EVERY TWO YEARS.

43 E. The remedial investigation shall collect the data necessary to  
44 adequately characterize the site or the portion of the site for the purpose  
45 of developing and evaluating effective remediation alternatives pursuant to

1 the feasibility study requirements prescribed by subsection F of this  
2 section.

3 F. The feasibility study shall be fully integrated with the results  
4 of the remedial investigation and shall include an alternative screening step  
5 to select a reasonable number of alternatives in a manner consistent with the  
6 rules and procedures adopted pursuant to section 49-282.06.

7 Sec. 4. Section 49-289.04, Arizona Revised Statutes, is amended to  
8 read:

9 49-289.04. Water quality assurance revolving fund advisory  
10 board; definitions

11 A. The water quality assurance revolving fund advisory board is  
12 established to provide recommendations to improve the functioning of the  
13 program established pursuant to this article.

14 B. The board consists of the following members:

15 1. A representative from a qualified business as defined in section  
16 49-292.01.

17 2. A representative of a water provider.

18 3. A representative of an agricultural improvement district.

19 4. One representative of a municipal government of a municipality with  
20 a population of two hundred fifty thousand persons or more and one  
21 representative of a municipal government of a municipality with a population  
22 of less than two hundred fifty thousand persons.

23 5. Two persons residing within the boundaries of a site located in a  
24 city or town with a population of one hundred thousand persons or  
25 more. These individuals may be members of a community advisory board formed  
26 pursuant to section 49-289.03.

27 6. One person residing within or in close proximity to the boundaries  
28 of a site located in a city or town with a population of less than one  
29 hundred thousand persons or an unincorporated area. This person may be a  
30 member of a community advisory board formed pursuant to section 49-289.03.

31 7. Two representatives of businesses.

32 8. A person with an academic appointment at a college or university  
33 and who has technical expertise in groundwater remediation.

34 9. A representative of a mining entity.

35 10. A representative of the agricultural industry.

36 11. A representative of the governor's office.

37 12. The director of environmental quality or the director's designee.

38 13. The director of water resources or the director's designee.

39 14. The director of the department of health services or the director's  
40 designee.

41 15. The attorney general or the attorney general's designee.

42 C. Members prescribed by subsection B, paragraphs 1 through 11 of this  
43 section shall be appointed by the governor for staggered terms of up to three  
44 years pursuant to section 38-211 and shall have technical expertise related

1 to or personal knowledge of or experience in remedial actions conducted  
2 pursuant to this article or CERCLA.

3 D. The board shall:

4 1. Select a chairperson and vice-chairperson from among its members.

5 2. Meet at least quarterly, pursuant to subsection F of this section.

6 3. Evaluate the overall effectiveness of the program established  
7 pursuant to this article, including:

8 (a) The prioritization of sites.

9 (b) The selection of remedies and their effectiveness.

10 (c) The allocation process.

11 (d) The pace of remedial actions.

12 (e) The adequacy of funding provided for remedial actions and agency  
13 responsibilities at current and future sites, including the need for  
14 additional funding to account for inflation.

15 (f) The criteria and processes for settlements.

16 (g) The effectiveness of early settlement incentives.

17 (h) The effectiveness of disincentives for parties not willing to  
18 participate in the allocation process.

19 (i) The level of coordination between the department of environmental  
20 quality and the department of water resources.

21 (j) The effectiveness of incentives to encourage beneficial use of  
22 remediated water.

23 (k) The well inspection and cross-contamination prevention program.

24 (l) The pace of rule making by the department of environmental  
25 quality.

26 (m) The participation of the department of water resources and other  
27 state agencies.

28 (n) Any other aspects of the program deemed relevant by the board.

29 4. At least once every five years, submit a comprehensive report to  
30 the director, the legislature PRESIDENT OF THE SENATE, THE SPEAKER OF THE  
31 HOUSE OF REPRESENTATIVES and the governor summarizing the board's evaluation  
32 of the effectiveness of the program established pursuant to this article and  
33 containing any recommendations for improving the effectiveness of that  
34 program.

35 E. The board may:

36 1. Meet more often than quarterly to conduct its business.

37 2. Form subcommittees to consider specific issues.

38 3. Transmit specific recommendations for improving the effectiveness  
39 of the program established pursuant to this article to the director, the  
40 legislature PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF  
41 REPRESENTATIVES and the governor at any time.

42 4. Solicit or accept comments from any person on any topic within the  
43 scope of the board's authority pursuant to this subsection and subsection D  
44 of this section.

1 F. Meetings of the board or any subcommittee shall be open to the  
2 public. An opportunity for public comments shall be provided. Meetings of  
3 the board or a subcommittee may be held in any county in which a site is  
4 located. Meetings of the board and any subcommittees of the board are  
5 subject to the requirements of title 38, chapter 3, article 3.1. Public  
6 notice of all meetings of the board may be provided by notice in the Arizona  
7 administrative register, by existing available electronic media maintained  
8 by the department, by recorded inclusion in toll free telephonic recordings  
9 accessible to all persons and by other appropriate means, if  
10 feasible. Notice also may be provided through the community advisory boards  
11 established pursuant to section 49-289.03. Meetings of the board or a  
12 subcommittee may be coordinated with meetings of a community advisory board  
13 established pursuant to section 49-289.03.

14 G. Members of the board shall serve without compensation but are  
15 eligible for reimbursement for travel and expenses as provided in title 38,  
16 chapter 4, article 2.

17 H. State agencies shall cooperate in providing information and other  
18 assistance to the board. The director of environmental quality and the  
19 director of water resources shall consider the recommendations of the board  
20 in administering the requirements of this article.

21 I. Members of the board are subject to title 38, chapter 3, article  
22 8. Notwithstanding title 38, chapter 3, article 8, unless a member has a  
23 direct pecuniary or proprietary interest, a member's discussion or vote on  
24 an issue of general applicability to the program established pursuant to this  
25 article is not an indirect conflict of interest. A member of the board shall  
26 not vote on or otherwise participate in any manner on a specific  
27 recommendation of the board relating to a particular site if the member is  
28 identified as a responsible party in a notice of liability allocation issued  
29 by the department of environmental quality pursuant to section 49-287.05  
30 relating to that site, or if the member receives a significant portion of  
31 income directly or indirectly from a person identified as a responsible  
32 party.

33 J. For THE purposes of this section:

34 1. "An issue of general applicability" means an issue that affects a  
35 substantial number of persons affected by this article and therefore  
36 qualifies as a remote interest as defined in section 38-502 and applied in  
37 section 38-503.

38 2. "Significant portion of income" has the same meaning prescribed in  
39 section 49-322, subsection B.

40 Sec. 5. Section 49-292, Arizona Revised Statutes, is amended to read:

41 49-292. Settlement; authority and effect

42 A. The director shall consider any offer of settlement by a person who  
43 is potentially liable for remedial action costs under this article and  
44 CERCLA. The director shall consider the factors in section 49-282.06 and  
45 section 49-285, subsections E and F in determining whether to settle any

1 person's liability. In determining the settlement amount, the director shall  
2 take into account any past costs incurred for remedial actions at the site  
3 by the person. Costs of remedial actions that are incurred by an eligible  
4 party as defined in section 49-281, that are or have been approved by the  
5 director pursuant to section 49-285, subsection B and that are conducted  
6 under the oversight of the director shall be used as a credit against that  
7 eligible party's liability. Nothing in this section requires the director  
8 to reimburse from the fund the orphan share of costs of approved remedial  
9 actions incurred by an eligible party before June 30, 1997. The director may  
10 enter into a settlement agreement or consent decree with a potentially  
11 responsible party or with a prospective purchaser pursuant to section  
12 49-285.01 without making an express finding in the agreement regarding an  
13 imminent and substantial endangerment to the public health or welfare, the  
14 waters of this state or the environment.

15 B. In any settlement agreement or consent decree entered into pursuant  
16 to subsection A of this section, the director may provide any potentially  
17 responsible party with a covenant not to sue concerning any liability to the  
18 state under this article or under CERCLA including future liability that may  
19 result from a release or threat of a release of a hazardous substance  
20 addressed by a remedial action whether that action is on site or off site. A  
21 covenant not to sue takes effect when the settlement agreement or consent  
22 decree becomes final. A covenant not to sue with respect to future liability  
23 shall include an exception that allows the director to sue the responsible  
24 party concerning future liability from the release or threatened release that  
25 is the subject of the covenant if the liability arises out of conditions that  
26 are unknown to the director at the time the director enters into the  
27 covenant. A covenant not to sue does not preclude the director from suing  
28 the potentially responsible party for failure to comply with the terms of the  
29 settlement agreement or consent decree in which the covenant was included.

30 C. A potentially responsible party who has resolved its liability to  
31 the state that arises from this article or from CERCLA in a judicially  
32 approved consent decree is not liable for claims for contribution or cost  
33 recovery regarding matters addressed in the consent decree. Any such  
34 judicially approved consent decree does not discharge other potentially  
35 responsible parties unless its terms so provide, but such a settlement does  
36 reduce the potential liability of other potentially responsible parties by  
37 the amount of the settlement. IF A POTENTIALLY RESPONSIBLE PARTY RECEIVES  
38 AN ALLOCATION PURSUANT TO SECTION 49-287.06 OR 49-287.07 THAT IS LESS THAN  
39 THE AMOUNT THE POTENTIALLY RESPONSIBLE PARTY AGREED TO PAY THE STATE PURSUANT  
40 TO A SETTLEMENT AGREEMENT OR CONSENT DECREE, THE EXCESS AMOUNT PAID BY THE  
41 POTENTIALLY RESPONSIBLE PARTY SHALL BE CREDITED TO THE FUND. ANY PAYMENT BY  
42 A POTENTIALLY RESPONSIBLE PARTY IN EXCESS OF THE ALLOCATION SHALL NOT REDUCE  
43 THE PROPORTIONATE LIABILITY OF ANY OTHER POTENTIALLY RESPONSIBLE PARTY.

1 D. If the state has obtained less than complete relief from a  
2 potentially responsible party who has resolved its liability to the state,  
3 the state may bring an action against any other potentially responsible party  
4 pursuant to section 49-287.07 who has not so resolved its liability.

5 E. A potentially responsible party who has resolved its liability to  
6 the state may seek contribution for matters addressed in the settlement from  
7 any person who is not a party to a settlement entered into under this  
8 section.

9 F. In any action under this section, the rights of any potentially  
10 responsible party who has resolved its liability to the state in a judicially  
11 approved consent decree or a settlement agreement are subordinate to the  
12 rights of the state for matters addressed in the settlement agreement or  
13 consent decree, unless otherwise provided in the settlement agreement or  
14 consent decree. If a potentially responsible party who has resolved its  
15 liability to the state in a settlement agreement or a consent decree provides  
16 written notice to the department that it has initiated a lawsuit to recover  
17 some or all of its remedial action costs from other potentially responsible  
18 parties, the department within thirty days shall provide written notice to  
19 the party filing the lawsuit of the department's intent to assert any  
20 superior claims the department may have against the other potentially  
21 responsible parties. If practicable, the written notice shall include the  
22 anticipated dollar amount of the department's claims against each party.

23 G. The court shall not approve a consent decree entered into pursuant  
24 to this section for a period of thirty days after the date that notice of the  
25 terms of the consent decree is provided to the public to allow for public  
26 comment. Any comment shall be filed with the court. After the expiration  
27 of the thirty day public comment period, the director through the attorney  
28 general may petition the court for entry of the consent order.

29 H. A person's decision to enter into a settlement agreement pursuant  
30 to this article shall not be construed as an admission in any other judicial  
31 proceeding as to the fact or extent of that person's liability with respect  
32 to the releases or threatened releases that are covered by the settlement.

33 Sec. 6. Report on recommended WQARF program reforms

34 A. The water quality assurance revolving fund advisory board shall  
35 prepare a report on recommended reforms to the water quality assurance  
36 revolving fund program regarding the following subjects:

37 1. Reforms to increase the cost-effectiveness of the water quality  
38 assurance revolving fund program.

39 2. Reforms to the site scoring method authorized pursuant to section  
40 49-287.01, Arizona Revised Statutes, to more accurately assess relative  
41 potential risks to the public health or welfare or to the environment among  
42 sites or portions of sites.

1           3. Reforms to criteria and procedures applied by the department of  
2 environmental quality for listing of sites on the registry pursuant to  
3 section 49-287.01, Arizona Revised Statutes.

4           B. The board's recommended reforms may include suggested changes to  
5 statutes, rules or agency procedures.

6           C. The board shall submit its report to the governor, the president  
7 of the senate, the speaker of the house of representatives and the director  
8 of environmental quality no later than November 14, 2003.

**APPROVED BY THE GOVERNOR MAY 7, 2003.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2003.**

Passed the House March 12, 2003,

Passed the Senate April 29, 2003,

by the following vote: 49 Ayes,

by the following vote: 30 Ayes,

8 Nays, 3 Not Voting

0 Nays, 0 Not Voting

Jake Flake  
Speaker of the House

Ken Blumenthal  
President of the Senate

Norman L. Fyfe  
Chief Clerk of the House

Charmine Ballington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

H.B. 2264

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.


\_\_\_\_\_  
Secretary of State

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

May 1, 2003,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

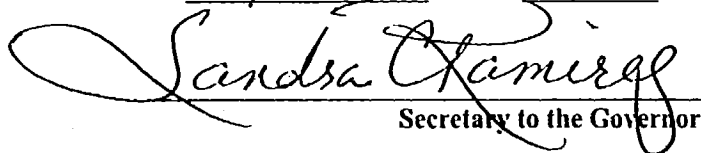
  
Speaker of the House  
*Pro Tempore*  
Erman S. Syou  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1 day of May, 2003

at 4:00 o'clock P M.

  
Secretary to the Governor

Approved this 7 day of

May, 2003,

at 10<sup>00</sup> o'clock A M.

J. T. Ayik  
Governor of Arizona

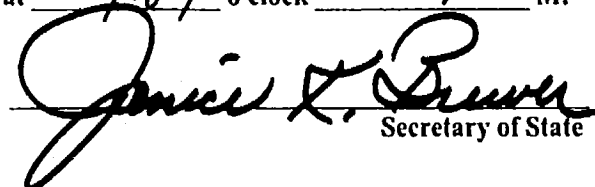
H.B. 2264

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of May, 2003,

at 4:09 o'clock P. M.

  
Secretary of State